SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40689; File No. SR–NASD–98–73]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Fees for Subscribers Who Receive Nasdaq Level 1 and Last Sale Data Through Automated Voice Response Services

November 19, 1998.

On October 1, 1998, the National Association of Securities Dealers,Inc. (''NASD''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 7010 to make permanent its current monthly pilot fee for subscribers who receive Nasdaq Level 1 and Last Sale data through automated voice response services.

The proposed rule change appeared in the **Federal Register** on October 20, 1998.[3] The Commission received no comments concerning the proposed rule change. This order approves the proposed rule change.

Nasdaq is proposing to make permanent its $21.25 monthly per port fee for subscribers who receive Nasdaq Level 1 service through automated voice response services.[4] These services provide callers with automated voice access to real-time Nasdaq pricing information. The monthly $21.25 fee has been in effect as a pilot fee for over 11 years and was originally based on a formulation of a $5.00 premium above the combined $16.25 Level 1/Last Sale rate in effect at that time. This fee has not increased despite a subsequent increase of Level 1/Last Sale Rates to the current $20.00 per month level. Given the continued usage of voice-based quote access services,[5] Nasdaq believes that the charge for such services should now be made a permanent part of its fee structure.

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)[6] and 15A(b)(6)[7] of the Act.[8] The Commission believes the proposal is consistent with these provisions of the Act because the fee is reasonable and equitable and will apply in a non-discriminatory manner to all member firms that use the Nasdaq Level 1 automated voice response service.

The proposed fee has been in effect since the pilot's inception 11 years ago.[9] During this time members have paid this fee without complaint. Moreover, the NASD has kept the per port fee constant despite a $3.75 increase in Level 1/Last Sale rates. Thus, the Commission supports this fee becoming a permanent part of the NASD's fee structure. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–98–73) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Rel. No. 40546 (October 13, 1998), 64 FR 56055. There was a misprint in the **Federal Register** version of this release. The **Federal Register** contained the following sentence: ''Nasdaq believes that the charge for such services should *not* be made a permanent part of its fee structure.'' *Id.* at p. 56056 (emphasis added). The correct text, as submitted to the **Federal Register** by the Commission, with emphasis added, is as follows: ''Nasdaq believes that the charge for such services should *now* be made a permanent part of its fee structure.'' This sentence is not in the **Federal Register** release. The correction was published on November 17, 1998, in Securities Exchange Act Rel. No. 40546, 63 FR 63967 (November 17, 1998).

[4] A vendor's voice port count is defined as the maximum number of callers capable of accessing Nasdaq data at any given time. For example, if a vendor's voice port count is 100 (*i.e.,* capable of handling a maximum of 100 callers at any given time) then the fee accessed would be $2,125 ($21.25 x 100). Conference call on October 6, 1998, between Thomas P. Moran, Senior Attorney, Office of General Counsel, Nasdaq, and Mignon McLemore, Attorney and Robert B. Long, Attorney, Division of Market Regulation, Commission.

[5] There are currently 7,629 voice ports in service.

[6] Section 15A(b)(5) requires that an association's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. 15 U.S.C. 78*o*–3(b)(5).

[7] Section 15A(b)(6) requires that an association's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. 15 U.S.C. 78*o*–3(b)(6).

[8] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. The Commission believes that disseminating real-time pricing information through automated voice response systems enhances market efficiency and promotes competition among the markets. 15 U.S.C. 78c(f).

[9] The Commission notes that 11 years is a significant length of time to determine a pilot's viability. The Commission believes that gathering and analyzing market data to assess such factors as market interest and profitability should be done within a substantially shorter time frame.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[FR Doc. 98–31585 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40688; File No. SR–NYSE–97–31]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Its Rule 500 Relating to Voluntary Delistings by Listed Companies

November 18, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 1998, the New York Stock Exchange (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 2 to the proposed rule change as describe in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing the second amendment to its proposed rule change to replace existing NYSE Rule 500 with a new Rule 500 to revise the procedures a NYSE-listed company must follow to delist its securities from the Exchange. The test of Amendment No. 2 to the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.